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IN THE

Supreme Court of the United States

October Term, 1968
No. 855

GEORGE ULLMAN and JOE SIMON,

Petitioners,

vs.

KYLE Z. GRAINGER, JR.,

Respondent.

Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

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Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

To the Honorable The Chief Justice and the Associate Justices of the Supreme Court of the United States:

Petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit, entered in the above-entitled case on June 18, 1968.

Citations to Opinions Below.

The Orders of the District Court filed April 26, 1967, May 22, 1967, and August 3, 1967, from which consolidated appeals were taken in this cause, and the opinion of the court below filed on June 18, 1968, are not reported, either officially or unofficially, and for convenience are appended to this petition as Appendix I.

A copy of the judgment of the court below is appended to this petition as Appendix II.

Jurisdiction.

The judgment of the Circuit Court of Appeals was entered on June 18, 1968 (App. II, *infra*). Rehearing was denied on October 9, 1968. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1254(1).

Questions Presented.

I.

Whether the Bankruptcy Court acted in excess of its jurisdiction, and thereby denied Petitioners due process of law, when it vacated its final order of sale to Petitioners, ex parte and without notice to Petitioners, after the sale to Petitioners had been approved and confirmed by the Court.

II.

Whether or not the fundamental principles of law enunciated by the Supreme Court of the United States in the two cases of *Halliday v. Stuart*, 151 U.S. 299, 38 L. Ed. 141, 14 S. Ct. 302, and *Blossom v. Milwaukee & C. R. Co.*, (U.S.) 1 Wall 655, 17 L. Ed. 673, is still the law today, and therefore should have been followed by the Court below under the policy of *Stare Decisis*.

III.

Whether Petitioners were incorrectly characterized by the Circuit Court as receiving a mere contract right or whether Petitioners were actually purchasers under a judicial sale held in the Bankruptcy Court after due notice, advertising, a public hearing thereon, open bidding, and a confirmatory final Court order which gave them vested legal rights.

Constitutional and Statutory Provisions Applicable to This Case.

CONSTITUTION, FIFTH AMENDMENT:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actua service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life of limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

BANKRUPTCY ACT, SECTION 116(3) (11 U.S.C. SECTION 516):

Upon the approval of a petition, the judge may, in addition to the jurisdiction, powers, and duties in this chapter conferred and imposed upon him and the court—

> (3) authorize a receiver or a trustee or a debtor in possession, upon such notice as the judge may prescribe and upon cause shown to lease or sell any property of the debtor, whether real or personal, upon such terms and conditions as the judge may approve;

Statement of the Case.

The Debtor Corporation filed the instant proceedings for the reorganization of a corporation and its subsidiaries under Chapter X of the Bankruptcy Act on January 31, 1964 [C. T. p. 2]. The jurisdiction of the District Court was invoked because the case arises under the Bankruptcy Act. The decision in the court